Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In Matter of	)	
	)	
Revision of Procedures Governing Amendments	)	MB Docket No. 05-210
To FM Table of Allotments and Changes	)	RM-10960
Of Community of License in the Radio Broadcast	)	
Services	)	

To: The Commission

REPLY COMMENTS OF REYNOLDS TECHNICAL ASSOCIATES, LLC
AND
BRANTLEY BROADCAST ASSOCIATES, LLC

In the initial comment stage of that certain Notice of Proposed Rule Making set forth in MB Docket No. 05-210 (the "NPRM"), both Reynolds Technical Associates, LLC ("RTA) and Brantley Broadcast Associates, LLC ("BBA," and together with RTA, "RTA-BBA") filed comments in support of the NPRM. RTA-BBA is providing reply comments herein for the purposes of (i) reiterating its positions as stated in such initial comments and (ii) providing a response to certain comments filed by other parties.

Summary

RTA-BBA begins by restating its support for, and making additional comments with respect to, certain comments made during the initial comment stage. First, RTA-BBA believes that the Federal Communications Commission (the "FCC" or "Commission") should allow for AM and FM community of license changes by the filing of minor modification applications. While most commenters appeared to be in favor of such proposal, there were limited comments seeking to restrict certain licensees' ability to change its community of license. Such restrictions would ignore the reality of a population that is trending from rural to urban areas. In addition, RTA-BBA offers its support for the related proposal that the 60 dbu, in lieu of the present 70 dbu, should be the required signal strength for coverage of a community of license because it would (i) be consistent with the "Dortch Rule" which requires that the use of alternate propagation models require a 60 dbu over 100% of the community of license and (ii) restore the loss which the broadcast community incurred when the Commission instituted the delta h rule to thwart the use of the Longley-Rice model.

Second, the Commission should mandate that parties file a Form 301 when filing petitions to amend the Table of Allotments to add (or modify) an FM allotment. Such proposal would significantly reduce the ability of frequent-filers and green-mailers to stifle the allotment process. Third, RTA-BBA discusses the reasons why the Commission should not limit the number of channel changes that may be proposed in one proceeding to amend the table of allotments. In short, such a limitation would, among other things, significantly limit the potential for additional large-market signals (which signals could be programmed for certain growing population groups in urban markets, including minority communities), even though such proceedings compose only 3.3% of FCC Report and Order grants. Fourth, RTA-BBA reiterates its support for the comments of AMS and Keymarket (as expounded upon by BBA) with respect to removing a community's only aural service.

Finally, RTA-BBA concludes by making certain additional comments concerning various points made by other parties during the initial comment stage. RTA-BBA believes that making EMI an issue in the Commission's rule making process could be devastating, leading to the exercise by the FAA of an unreasonable amount of authority over the broadcast industry to enforce almost impossible standards. RTA-BBA further notes that secondary services now appear to be seeking full spectrum protection. Such protection would lead to unmanageable gridlock in the spectrum. The current proceeding does not seem to be the appropriate venue for consideration of such a proposal.

I. The Commission should allow for AM and FM community of license changes by the filing of minor modification applications.

Very few parties that provided comments to the NPRM opposed allowing a change to a station's community of license by application or, in essence, by minor change. This certainly seemed to be true of parties who have experienced a petition held at the Commission for several years.

RTA-BBA is in agreement with the vast majority of the points made by Mullaney Engineering, Inc. ("Mullaney"). However, there could be conceptual problems in the event that, as proposed by Mullaney, the FCC allows changing a station's community of license only in circumstances in which the new community has a minimum of 25% of the total population inside the new primary service area. This could create a restriction on stations upgrading from a small class to a class C or C0 anywhere near a

metropolitan area if a change in community of license is required to satisfy spacing requirements. Mullaney, as well as Cohen, Dippell and Everest, cite filing abuses created by parties when such parties attempt to manipulate the system to create deterrents to competition or solely for financial gain. BBA pointed out in its initial comments that this is one of the major hindrances to broadcast enhancement filings. BBA also made the statement that the practice of 'green mailing' was a major factor causing certain licensees to take actions that sometimes appear to be attempts to circumvent the FCC's rules.

Cohen, Dippell and Everest went even further in proposing that no additional FM channel changes should be made to modify other FM facilities. If this suggestion was implemented, spectrum enhancements, especially in the more populated areas of the country, would be in virtual gridlock. Maximum utilization of the spectrum could not be achieved if the Commission were to adopt this approach.

Keymarket and du Treil, Lundin & Rackley ("du Treil") each correctly observed that the 307(b) process allows the RF signals to follow the population groupings, and that such result is not a 'bad thing.' Keymarket states: " At some point (maybe in this proceeding), the Commission must come to terms with the contradiction between its historical mindset regarding the strictures of Section 307(b) and current and near future market, technological and demographic realities." Du Treil points out that it has observed such population shift by giving an example of a community in Florida without service that has grown from zero population to a population of 15,000 in ten years. Unless the Commission issues new community of license changes, communities such as this one will never experience a local aural service. In a footnote, First Broadcasting asked, "what is wrong with migration." The RF signals are merely following the movement of population groupings from a rural to urban society. First Broadcasting correctly notes that it is possible to err by correcting one cumbersome condition by replacing it with another.

Keymarket also reiterated its earlier proposal that the 60 dbu, in lieu of the present 70 dbu, should be declared the required signal strength to the community of license. RTA-BBA supported such proposal at the initial comment stage, pointing out that it is consistent with the "Dortch" rule, which states that the use of alternate propagation models require a 60 dbu over 100% of the community of license. BBA pointed out that the use of the 60 dbu contour for city grade service would restore the loss which the broadcast engineering community experienced when the Commission instituted the delta h rule to thwart the use of the Longley-Rice model. Georgia-Carolina Radiocasting, LLC weighed in on the need to return to the

previous technical parameters of Longley-Rice, which RTA-BBA certainly supports; however, such request would be moot if the f(50,50) 60 dbu contour were to be used as the city grade service.

Booth, Freret, Imlay and Tepper stated in its comments that changes of community of license for AM stations is an opportunity to correct mounting problems encountered by shrinking antenna sites. BBA, in its initial comments, referred to the same problem for AM licensees. When such problem is combined with ever increasing local zoning and land use regulations, as well as the added time currently needed to obtain approval for a major change at the Commission, many urban AM stations are reduced to inferior coverage and public service. Such unnecessary delays cannot be in the public interest. Educational Media Foundation pointed out that the need for NCE stations to be able to obtain major changes by filing minor change applications is as necessary as those in the AM service since a number of its stations have been waiting for several years for a major change window.

The above discussion emphasizes (i) the need for change in community of license to be accomplished by minor change application, (ii) the flexibility of Section 307(b) and (iii) the need for an overall streamlining of the allotment process both by making it more flexible and by reducing the amount of work to be performed by the Commission's staff. If designed and implemented correctly, there is no reason that the public interest, the interests of broadcast licensees, and the resources of the Commission cannot each be enhanced.

II. The Commission should mandate that parties file a Form 301 when filing petitions to amend the Table of Allotments to add (or modify) an FM allotment.

The vast majority of commenters were in favor of the proposal whereby the Commission would mandate that parties file a Form 301 when filing petitions to amend the Table of Allotments to add (or modify) an FM allotment. KM went as far as to state that the petitioners in such situations should have to submit the opening round bid for new allotments. RTA-BBA is agreeable to such position. In its comments, BBA noted that frequent filers were troublesome to the allotment process and often were essentially 'greenmailers,' though this is not universally true. RTA-BBA has encountered persons that could be classified as 'frequent filers' that were not 'greenmailers.' Nonetheless, requiring a filing fee with

all allotment filings would likely eliminate the frequent filer/greenmailer problem that serious licensees currently face in the allotment process.

It appears that BBA was the only commenter to propose a graduated filing fee in the rule making process. In short, BBA proposed that the filing fee for rule makings could be escalated according to the number of stations proposed in the petition or counterproposal. RTA-BBA stands by such position, which has three primary advantages: (1) it eliminates all but the serious licensees; (2) it provides added financial support for the Commission staff in the event additional stations in a proceeding require more of the Commission's resources to process; and (3) by preventing certain licensees from manipulating the system in an effort to avoid competition, the Commission's workload would be greatly reduced by the elimination of superfluous filings.

III. The Commission should not limit the number of channel changes that may be proposed in one proceeding to amend the Table of Allotments.

Most commenters appear to agree with the position, strongly supported by RTA-BBA, that the Commission should not limit the number of channel changes that may be proposed in one proceeding to amend the Table of Allotments. BBA pointed out that the Commission was inviting comments on the possibility of increasing the number of stations that can be involved in a contingent application to a number greater than four, while simultaneously proposing to limit the number of stations that can be involved in the rule making process to five. Several commenters suggested ways to keep the number of stations to a minimum, including an excellent discussion by Arlington Capital regarding the original reason for allotment reference sites and why they have outlived their usefulness.

Concerning the staff's statements that large filings put an extra burden on the Commission in the processing of rule makings, Cox Communications ("Cox") pointed out that, typically, large filings go through several levels of review because each consenting party usually has its own legal and engineering representatives review the proposal for accuracy. Cox states that a ". . . vast majority of agreements to modify are voluntary and the burden of creating a more effective use of the spectrum falls on station owners."

Anthony V. Bono, in his comments, rightly stated that, when counting the number of stations that are allowed to be involved in the contingency application process, stations changing their city of license that require no technical changes should not be counted. BBA requested that the number of stations allowed to participate in the contingency application process be increased and provided several means by which such number could often be reduced. BBA further stated that the process should include all aural services. Du Treil stated that the contingency application process must be modified to include AM, FM and NCE stations, and it made siginificant points regarding the concept of a 'pack' application that may include applications that are non-mutually exclusive.

Minority Media pointed out that restricting the number of stations in a rule making proceeding to five would greatly limit the potential for additional, larger market signals. This in turn limits the potential for the entry of minority groups into the more lucrative markets. BBA offered support for such position by noting that, as a result of one large group upgrade in Oklahoma/Texas, a full class C upgrade resulted indirectly (by a spin off), and such station now operates as a minority-owned, maximum class C station.

Perhaps the most revealing and insightful comments made concerning the Commission's proposal to limit the rule making process to only five stations was presented by Apex Broadcasting, Inc. et. al. ("Apex"). Such filing presented a table showing that, on average, the percentage of Report and Order grants involving five or more changes to the table is only 3.3%.

In summary, the Commission should be particularly aware of the fact that the FM band is becoming increasingly congested and, in a large part of the country, licensees cannot make any type of enhancement without involving several stations. It seems improbable that the proposed five-station limit could potentially serve the public interest.

IV. RTA-BBA supports the comments of AMS and Keymarket (as expounded upon by BBA) with respect to removing only aural service from a community.

BBA stated in its comments that the Commission's methodology with respect to establishing remaining services is flawed. Currently, only full time AM stations are considered, and those are considered only with regard to their NIF contour. Needless to say, the restrictive nature of the NIF from the majority of AM stations makes this group practically unusable as remaining service. All daytime-only

AM stations are, by definition, unusable as remaining service. BBA pointed out that daytime AM and nighttime stations with restrictive NIF signals should be combined with the 50% sky wave of clear channel stations to demonstrate remaining service (one day time or night time AM with small NIF with each 50% sky wave service). RTA-BBA urges the Commission to consider sky wave as full service because it is a protected service.

New Star Broadcasting filed comments in support of removing a community's only local service from the perspective of personal experience. The points made by New Star are reasonable and poignant and should be given full consideration by the Commission. In any event, the combining of NCE, AM and FM stations in the same minor change proceeding would open the door to so many options that the total removal of all local service from a local community would be extremely rare.

V. Additional comments of RTA-BBA concerning various points made by other parties in the initial comment stage.

A. EMI.

Two commenting parties asked that FAA studies concerning EMI be made part of the rule making process (i.e., Cohen, Dippell and Everest and Hammond Broadcasting, Inc.). Making EMI an issue in the Commission's rule making process would be treading onto a very slippery slope. If the FAA were allowed to exercise its will (as it proposes) in this matter, no RF technical modification would be allowed to a broadcast facility without first obtaining FAA approval. This would include modifications now considered so minor that the Commission does not require the filing of a Form 301 or Form 350. The question would then have to be asked as to whether the FAA or the FCC is regulating the spectrum.

The FAA/EMI model is flawed. All firms making technical and engineering filings before the Commission have 'horror stories' in connection with EMI study results. RTA recently became aware of a station that had operated at its current site for approximately 25 years with its current tower, power and HAAT. The new owners of the station recently discovered that the station's 140 foot tall tower failed obstruction glide-slope requirements using the FCC's "Towair" computer model and, therefore, were required to register the tower with the FAA. Upon review by the FAA, the tower itself was not determined to be a hazard to air navigation. However, the associated FAA EMI study not only required that spurious

emissions be reduced to ridiculous and impossible levels, but also that the proposed (existing) station immediately reduce and maintain its ERP 4.5 db below its FCC authorized level. That requirement resulted in roughly a 66% reduction in ERP for the station. Otherwise, according to the FAA, the station would not satisfy EMI standards under any conditions. As noted, this occurred to a station that had operated for more than a quarter century with no technical changes and no interference complaints with a frequency on the low end of the FM band.

Currently, RTA is beginning a study of existing stations in larger markets on channels 260 and above. It is RTA's belief that almost all existing facilities would require some type of technical modifications to satisfy FAA EMI requirements. The Commission should not allow a methodology as flawed as the FAA EMI program to be a factor in any authorizations granted during the rule making process.

B. Protection for Secondary Services.

Several of the filed comments were aimed at calling attention to the plight of facilities operating with secondary services (i.e., translators, Class D and LPFM). It is never pleasant to be involved in a spectrum proceeding that causes a secondary service to lose its authorization. Nonetheless, such services are, by definition, secondary to full service broadcasters. Despite this, secondary services now appear to be seeking full protection in the spectrum. All of such secondary services make good points regarding their need for spectrum space. However, for the Commission to even consider full protection (or a reasonable facsimile thereof) for such services would bring the spectrum to gridlock in a very short period of time.

The NPRM is not the forum to begin consideration of a comprehensive plan to provide full spectrum protection to secondary services. In the alternative, RTA-BBA has begun a research project whereby RTA will submit for Commission consideration a plan that would provide a measure of protection to secondary services while avoiding spectrum gridlock.

Conclusion

The FM spectrum is currently under a freeze on certain filings until the Commission considers all of the comments to the NPRM made in the two comment periods that close on November 1, 2005. The Commission must now move expeditiously to draft new rules for the items addressed in the NPRM. RTA-

BBA urges the Commission to adopt the procedural modifications it proposed for streamlining AM, NCE and FM spectrum modifications. The First Broadcasting proposal (perhaps with a few modifications, additions and elaborations) is long overdue and is an excellent opportunity for the Commission to restructure its allotment procedures.

Regardless, the Commission's efforts in this matter would be greatly muted unless the new rules are implemented in a timely manner and the above-referenced freeze is lifted soon. The Commission is certainly aware that any prolonged freeze would have a devastating and wide-ranging effect on the entire broadcast industry and could not be justified under public interest scrutiny.

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